

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Implementation of Sections 11 )  
 and 13 of the Cable Television )  
 Consumer Protection and )  
 Competition Act of 1992: )  
 Equal Employment Opportunities )

MM Docket No. 92-264

Horizontal and Vertical )  
 Ownership Limits, Cross-Ownership )  
 Limitations, and Anti-Trafficking )  
 Provisions )

TO THE COMMISSION

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION  
FOR THE ADVANCEMENT OF COLORED PEOPLE**

The National Association for the Advancement of Colored People ("NAACP") respectfully submits these Reply Comments in response to ¶¶150 and 207 of the Commission's Report and Order and Further Notice of Proposed Rulemaking, FCC 93-332 (released July 23, 1993) ("R&Q"), addressing minority ownership incentives.

**INTEREST OF THE NAACP**

The NAACP, founded in 1909, is the oldest and (with nearly 500,000 members) the largest civil rights organization in the United States. The basic aims of the NAACP are to advance minority participation in all aspects of society and to destroy all limitations or barriers based upon race or color. The NAACP has long been involved in strengthening the machinery for combatting discrimination within the media and in maintaining the policies aimed at remedying societal discrimination and promoting diversity of broadcast programming.

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**CABLE SYSTEM OWNERSHIP**

In their March 23, 1992 Comments in the Cable/Network crossownership proceeding, MM Docket No. 82-434, the NAACP and LULAC urged that minority ownership incentives be associated with any network expansion into cable system ownership:

Today, no more than six systems are minority owned. Unlike broadcasting, in which the growth of multiple ownership was limited for years by the 7-7-7 and later the 12-12-12 rules, cable system ownership has been unrestricted by national multiple ownership rules. Consequently, as of November, 1991, according to data derived from TV Digest, just two MSOs controlled access to approximately 27.5% of U.S. cable households....

The Civil Rights Organizations...propose that the 5% cap they have recommended be increased to the extent that a network invests in or helps finance minority controlled cable systems.

Because such joint ventures and financings would have enormously significant diversification benefits, the limit on a network's permissible percentage of the nation's cable subscribers should increase at a multiple (eg. two times) its investment or financing in the minority controlled systems, multiplied by the number of subscribers in the minority controlled systems. The increase in the ownership cap of a network taking advantage of the Rule could increase without limitation and without attribution of the network's interest in the minority controlled systems.

The Civil Rights Organizations urge the Commission to apply this incentive provision such that the extent of the increase would be equal to at least twice the product of the network's investment in or financing of the minority controlled system and the number of subscribers of that system....

A network's participation in a minority controlled cable startup or acquisition could take the form of equity, debt, or a combination of the two. If debt and equity are both used, the percentage of the total capitalization (debt and equity) provided by the network would be used to calculate the permitted increase in the network's ownership cap if that percentage is higher than merely using the network's percentage of equity ownership to determine the cap increase....

The need for a minority ownership incentive provision could not be more compelling at this time. As noted above, minorities continue to be shut out of cable system ownership except in a handful of large cities in which strong minority owned companies had the political clout to win franchises and the economic clout to retain them....

Today, the only minority ownership initiative with any relevance to cable is the tax certificate policy. That policy has gone completely unused, which should come as no surprise. Experienced, multiple system holders enjoy highly favorable lending terms. Thus, an MSO seeking to buy an independently run system would usually have more economic clout without a tax certificate than minorities have with tax certificates.

With no meaningful minority ownership policy stimulating cable system ownership, and with minorities losing ground in broadcast station ownership, the time to stimulate minority ownership in cable is long overdue.

NAACP urges the Commission to adopt the investment-triggered approach described in the above cited Comments, with one limitation: that by taking advantage of the minority ownership incentive provision, no cable system owner could exceed access to 49% of all cable households.

If adopted, the concept NAACP has articulated is likely to dramatically increase minority media ownership. That was the hope of the late Congressman Mickey Leland when he persuaded the Commission to adopt the Mickey Leland Rule. See Multiple Ownership Rules (Reconsideration), 100 FCC2d 74, 94-95 (1985) (history omitted). That rule's two-station bump-up has in practice offered too slight an incentive to make it worthwhile for multiple station owners to make use of it; only Home Shopping Network, and two Black radio entrepreneurs, Bishop Willis and Ragan Henry, have done so. This experience suggests that dramatic, liberal incentives will be needed to attract the interest of MSOs.

**MINORITY INCENTIVES FOR  
VERTICALLY INTEGRATED PROGRAMMING**

The Commission has proposed to allow carriage of vertically integrated programming services beyond 40% of the number of channels occupied on a system "if such services are minority-controlled or are targeted to a minority audience." R&O, ¶207.

Minority control, not program content, should be the earmark for this incentive provision. Almost anyone can claim to be providing "minority" programming; that is a matter of subjective taste. Serious First Amendment concerns would arise when the Commission finds itself forced to rule on what is and is not "minority programming." Instead, the Commission should have confidence that minority control, in the long run, will lead to diversity in programming without the need for direct Commission supervision of program content. See Metro Broadcasting, Inc. v. FCC, 497 F.2d 547, 579-582 (1990).

Allowing "minority programming" to justify a bump-up would do great harm to legitimate minority owners of programming services. MSOs, with far greater resources than minority entrepreneurs, could simply start their own "minority" services. They would hardly have any incentive to carry independent minority owned services if they can get the bump-up by producing their own "minority" services in-house. Such non-minority controlled services are unlikely be as responsive to minority needs as independent, minority owned services would be. See Metro, supra, 497 F.2d at 580-582 ns. 31-34 (discussing research documenting the greater responsiveness of minority radio and television owners to minority needs.)

The Commission should authorize a substantial bump-up, allowing vertical integration up to 49% of available channels, but only for carriage of legitimate, minority controlled services.

Respectfully submitted,

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